

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JAMES R. HARRIS,)	
Petitioner,)	
)	CIVIL ACTION NO. 3:07-104
v.)	
)	JUDGE KIM R. GIBSON
JOHN YOST, Warden, FCI-Loretto,)	
Respondent.)	

MEMORANDUM OPINION & ORDER

Gibson, J.,

Now before the Court is petitioner James R. Harris' appeal (Document No. 8) from Magistrate Judge Francis X. Caiazza's June 1, 2007, Notice and Order (Document No. 5). Petitioner filed a Petition for a Writ of Habeas Corpus on May 9, 2007, indicating that a federal court in the Western District of New York had sentenced him to 46 months of imprisonment for violating 21 U.S.C. §§ 841 and 846. Document No. 3, p. 2. Conceding the validity of his conviction and sentence, Petitioner alleged that prison officials had acted beyond the scope of their authority in denying his application for placement in a Residential Drug and Alcohol Treatment Program (hereinafter "RDAP"). *Id.* at 1. Accordingly, Petitioner did not assert any right to be released from custody, but merely sought immediate enrollment in the RDAP. *Id.* at 10. Harris characterized his petition as one arising under 28 U.S.C. § 2241. *Id.* at 1.

On June 1, 2007, Magistrate Judge Caiazza, to whom this matter was referred, notified Harris that federal law required all constitutional claims to be consolidated in a single habeas petition. Document No. 5, p. 1. Judge Caiazza therefore offered to review the petition as it was then stated or,

alternatively, to grant Harris time in which to amend his petition. *Id.* The Magistrate's notice warned Harris, however, that "pursuant to 28 U.S.C. § 2241 ¶ 6 federal habeas corpus petitions must be filed within one year after the judgment becomes final," and that the limitations period would be tolled for only 120 days to allow amendment. *Id.* Judge Caiazza also referred to Harris' petition as one filed pursuant to 28 U.S.C. § 2255. *Id.* at 2.

Harris then filed this appeal on June 11, 2007, noting that he did not "wish to appeal the Magistrate Judges [sic] Notice and Order . . . in substance, only its interpretation of the Anti-Terrorism and Effective Death Penalty Act as it relates to § 2241." Document No. 8, p. 1. Harris objects to the classification of his petition as one arising under § 2255. Petitioner argues that because he concedes the validity of his sentence and challenges only its execution, he seeks a writ of habeas corpus under § 2241, which contains no limitations period.

The Court agrees that Harris' petition is properly addressed under the terms of § 2241. According to 28 U.S.C. § 2255,

[a] prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

Thus, § 2255 only provides habeas jurisdiction when the petitioner asserts a right to release or otherwise collaterally attacks his sentence. Because Harris has done neither, he cannot proceed under § 2255. *Coady v. Vaughn*, 251 F.3d 480, 485 (3d Cir. 2001). However, as the Third Circuit has held, § 2241 "confers habeas jurisdiction to hear the petition of a federal prisoner who is challenging not the validity

but the execution of his sentence.” *Id.* See also *Woodall v. Fed. Bureau of Prisons*, 432 F.3d 235, 241 (3d Cir. 2005) (quoting *Coady*); *Ganim v. Fed. Bureau of Prisons*, No. 06-3810, 2007 U.S. App. LEXIS 12483, at *3 (3d Cir. 2007) (nonprecedential opinion) (“[A] federal prisoner may challenge the execution of his sentence in a petition pursuant to § 2241.” (citing *Coady*)).

The Court will therefore grant Harris’ appeal and instruct the Magistrate Judge to treat the habeas petition as one arising under § 2241, which contains no limitations period. *Pollack v. Hobbs*, 98 F. Supp. 2d 287, 292 (E.D.N.Y. 2000). However, the Court also notes the possibility that § 2241 may not offer Petitioner the jurisdiction he requires. Addressing facts nearly identical to those *sub judice*, the Third Circuit noted that, because participation in RDAP provides “only the potential for a discretionary sentence reduction,” habeas jurisdiction was lacking under § 2241 as well. *Beckley v. Miner*, 125 Fed. Appx. 385, 388-89 (3d Cir 2005) (nonprecedential opinion). Nonetheless, because *Beckley* is not precedential authority, and because that tribunal apparently did not consider the effect of *Woodall*, the Court prefers at this time to avoid issues beyond the parameters of Petitioner’s appeal.

An appropriate Order follows.

AND NOW, this 14th day of June, 2007, upon consideration of Petitioner's Appeal of the June 1, 2007, Notice and Order (Document No. 8), **IT IS HEREBY ORDERED** that Magistrate Judge Caiazza's June 1, 2007, Notice and Order is reversed insofar as it treats the habeas petition as one arising under 28 U.S.C. § 2255. This matter is thus remanded with instructions that the petition be addressed under the terms of 28 U.S.C. § 2241.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Kim R. Gibson". The signature is written in a cursive, flowing style with a horizontal line underneath the name.

**KIM R. GIBSON,
UNITED STATES DISTRICT JUDGE**